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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

JACKSONS FOOD STORES, INC.,

Defendant.

Case No. 2:17-cv-01285-TSZ

[PROPOSED] CONSENT DECREE

I. INTRODUCTION

1. This action originated when Nathaniel Prugh (“Charging Party”) filed a charge of discrimination with the Equal Employment Opportunity Commission (“EEOC” or

[PROPOSED] CONSENT DECREE  
2:17-cv-01285-TSZ  
Page 1 of 12

EQUAL EMPLOYMENT  
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1 “Commission”). Mr. Prugh alleged that Jacksons Food Stores, Inc. (“Jacksons Food Stores” or  
2 “Defendant”) discriminated against him in violation of Title I of the Americans with Disabilities  
3 Act of 1990 and Title I of the Civil Rights Act of 1991 (“ADA”) when Defendant failed to hire  
4 him because of his disability.

5 2. On May 23, 2017, the EEOC issued a Letter of Determination with a finding of  
6 reasonable cause to believe that Jacksons Food Stores violated the ADA. Thereafter, EEOC  
7 attempted to conciliate the charge and conciliation was unsuccessful.

8 3. The Commission filed this lawsuit on August 24, 2017, in the United States  
9 District Court for the Western District of Washington alleging that Jacksons Food Stores  
10 discriminated against Mr. Prugh when it failed to hire him because of his disability.

11 4. The parties want to conclude fully and finally all claims arising out of the EEOC’s  
12 Complaint and Mr. Prugh’s charge of discrimination filed with EEOC. The EEOC and Jacksons  
13 Food Stores enter into this Consent Decree to further the objectives of equal employment  
14 opportunity as set forth in the ADA.

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16 **II. NON-ADMISSION OF LIABILITY AND NON-DETERMINATION BY THE COURT**

17 5. This Consent Decree is not an adjudication or finding on the merits of this case  
18 and shall not be construed as an admission by Jacksons Food Stores, Inc. of a violation of the  
19 ADA.

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21 **III. SETTLEMENT SCOPE**

22 6. This Consent Decree is the final resolution of all allegations of unlawful  
23 employment practices contained in Mr. Prugh’s discrimination charge, in the EEOC’s  
24 administrative determination, and in the EEOC Complaint filed herein, including all claims by  
25 the parties for attorney fees and costs.



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V. INSTATEMENT

9. Jacksons Food Stores will instate Mr. Prugh to the position of full-time Image Associate at Defendant's Seattle, Washington facility, located at 10 Denny Way, with a starting wage of \$15.45 per hour, plus medical and dental benefits, based on benefit eligibility, and potential for earned bonuses. Mr. Prugh will be instated in a 40-hour per week position. The starting date will be no later than September 21, 2018.

10. Jacksons Food Stores shall, in good faith, enter into the interactive process with Mr. Prugh regarding any requests for reasonable accommodation related to his disability of deafness, that would enable him to perform the essential functions of the Image Associate position, including, for example, providing ASL interpreters for trainings, ASL interpreters or closed captions for any training videos, and ASL interpreters for meetings regarding safety issues or any disciplinary or other personnel actions regarding Mr. Prugh.

VI. INJUNCTIVE AND OTHER RELIEF

A. General Provisions

11. Jacksons Food Stores' officers, agents, managers, supervisors, store managers, and hiring/interviewing officials at all its facilities and offices within its Washington Districts within Region 2, and all human resource professionals who provide advice and assistance to the foregoing individuals, and its successors and assigns are enjoined from discriminating in hiring practices against individuals who are deaf or hard of hearing. In recognition of its obligations under the ADA, Defendant shall institute the policies and practices set forth below.

12. Defendant will provide prior written notice to any potential purchaser of Defendant's businesses, or a purchaser of all or a portion of Defendant's assets, and to any other potential successor, of the EEOC's lawsuit, the allegations raised in the EEOC's complaint, and the existence and contents of this Consent Decree.

1 B. Anti-Discrimination Policies and Procedures

2 13. Within sixty (60) days from the date of entry of this Decree and for its duration,  
3 Jacksons Food Stores shall implement anti-discrimination policies and procedures that prohibit  
4 discrimination, explain to employees their rights and responsibilities under EEO laws, and are  
5 subject to periodic updating to reflect changes in anti-discrimination laws. The policies will state  
6 that they are promulgated at the direction of and with the endorsement by the highest level of  
7 Jacksons management. These policies and procedures shall be provided to the EEOC for review  
8 and comment no later than thirty (30) days prior to implementation. Within fourteen (14) days  
9 of receipt, the EEOC will advise Defendant of any comments. EEOC agrees to review the  
10 proposed policies and procedures in good faith.

11 14. Jacksons Food Stores' anti-discrimination policies will contain specific provisions  
12 relating to the Americans with Disabilities Act, as amended, with special emphasis on the ADA's  
13 interviewing and hiring obligations, to include, at a minimum, (a) an express description of how  
14 its officers, agents, managers, supervisors, store managers, hiring/interviewing officials, and  
15 human resource personnel must carry out hiring procedures with regard to an applicant for  
16 employment who is disabled, is "regarded as" disabled, who has a record of disability, or who  
17 expresses a need for reasonable accommodation; (b) an express description of how an applicant  
18 with a physical or mental impairment may request assistance with an application or seek a  
19 reasonable accommodation pending the processing of an application; (c) an obligation to educate  
20 its officers, agents, managers, supervisors, store managers, hiring/interviewing officials, and  
21 human resource personnel on how to respond to such requests; and (d) an express statement that  
22 Jacksons Food Stores, will ensure that applicants for employment are individually assessed  
23 based upon their current capabilities at the time of their application, to perform the essential  
24 functions of the job with or without accommodation, and will not be excluded based solely on a  
25 disability, record of disability, or a perceived disability.

1           15.     Jacksons Food Stores' anti-discrimination policies will include a complaint  
2 procedure for employees and applicants to ensure convenient access to points of contact for  
3 reporting and require a timely response by the company. The procedures shall: 1) identify  
4 multiple points of contact through which employees and applicants can lodge complaints,  
5 including phone numbers, addresses, and email addresses for those points of contact; 2) allow  
6 complaints to be submitted verbally in the primary language of the employee, without need of  
7 submission of a written statement; 3) provide a method for documenting verbal complaints by  
8 management; 4) explain that Defendant will conduct a prompt and thorough investigation after a  
9 complaint is made or received and, where appropriate, will take remedial action upon conclusion  
10 of an investigation; and (5) indicate that, promptly upon the conclusion of the investigation of a  
11 complaint, Defendant will communicate to the complaining party the results of the investigation  
12 and including a general description of the remedial actions taken or proposed, if any.

14           16.     Not later than sixty (60) days after entry of this Consent Decree, Jacksons Food  
15 Stores shall distribute a written copy of its anti-discrimination policies to all its employees, both  
16 management and non-management. These policies will also be distributed to every employee  
17 hired or re-hired during the duration of this Decree and with all applications for employment,  
18 including applications available on-line.

20           17.     Policy Modifications. If the Defendant modifies any of the policies listed in  
21 paragraphs 13-16 above during the duration of the Decree, Defendant shall submit to the EEOC  
22 for its review and consideration the proposed modifications no later than thirty (30) days before  
23 adoption. Within fourteen (14) days of receipt, the EEOC will advise Defendant of any  
24 comments. EEOC agrees to review the proposed modifications in good faith.  
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1 C. Equal Employment Opportunity Training

2 18. Not later than ninety (90) days after entry of this Consent Decree, Defendant shall  
3 provide an annual, in person, interactive EEO training seminar to all its hiring/interviewing  
4 officials, human resources personnel, managers, store managers, and supervisors employed at all  
5 its facilities and offices within its Washington Districts within Region 2. These anti-  
6 discrimination trainings shall be, at minimum, two (2) hours in duration, and include, at a  
7 minimum, an overview of the ADA with special emphasis on: hiring procedures; responding to  
8 requests for reasonable accommodation, including providing ASL interpreters for deaf or hard of  
9 hearing employees and applicants; that retaliation against an employee or applicant who requests  
10 an accommodation or complains is prohibited; and Jacksons Food Stores' EEO policies relating  
11 to the ADA and hiring procedures. The trainings shall be aimed at helping attendees understand  
12 how to define and identify disability discrimination and retaliation, and the steps Defendant will  
13 take to review each request for a reasonable accommodation, and will be provided with an  
14 American Sign Language interpreter if any hearing-impaired employee is attending the training.

15 19. Not later than ninety (90) days after entry of this Consent Decree, Defendant shall  
16 provide an annual, in person, interactive EEO training seminar to all its employees employed at  
17 all its facilities and offices within its Washington Districts within Region 2. These anti-  
18 discrimination trainings for employees shall be, at minimum, one (1) hour in duration, and  
19 include, at a minimum, an overview of the ADA with special emphasis on: Jacksons Food  
20 Stores' EEO policies relating to the ADA, including for requests for reasonable accommodation;  
21 Defendant's process to appeal any Defendant decisions related to reasonable accommodation or  
22 other employment action; Defendant's complaint process and contact information for reporting  
23 disability discrimination; bystander intervention techniques when employees witness  
24 discrimination occurring; that retaliation against an employee or applicant who requests an  
25 accommodation or complains is prohibited; and contact information for EEOC as a resource for

1 ADA-related inquiries and to report discrimination. Defendant will provide an American Sign  
2 Language interpreter if any hearing-impaired employee is attending the training.

3 20. All training materials must be submitted to the EEOC for review and comment no  
4 later than thirty (30) days prior to holding the first training sessions. Within fourteen (14) days  
5 of receipt, the EEOC will advise Defendant of any comments. EEOC agrees to review the  
6 proposed training materials in good faith. The costs of training shall be borne by Defendant. If  
7 the Defendant modifies the EEO trainings identified in paragraphs 18-19 above during the  
8 duration of the Decree, Defendant shall submit to the EEOC for its review and comment the  
9 proposed modifications no later than thirty (30) days before adoption. Within fourteen (14) days  
10 of receipt, the EEOC will advise Defendant of any comments. EEOC agrees to review the  
11 proposed modifications in good faith

12 21. For the duration of this Consent Decree, Defendant shall notify the EEOC of the  
13 completion of the training seminars and shall specify the names and job titles of the individuals  
14 who participated in and completed the training. This information shall be provided as part of the  
15 annual report Jacksons Food Stores submits to the EEOC.

16 D. Non-Disclosure of Information

17 22. After instatement as provided in paragraph 9, if Mr. Prugh should separate from  
18 employment with Jacksons Food Stores, Defendant shall not disclose any information or make  
19 reference to any charge of discrimination or this lawsuit in responding to requests for  
20 information from potential employers about Mr. Prugh.

21 E. Policies Designed to Promote Accountability

22 23. Defendant shall specifically advise all managers and supervisors, store managers,  
23 hiring/interviewing officials, and human resources personnel at all its facilities of their duty to  
24 ensure compliance with its EEO anti-discrimination policies, including the prohibition against  
25 retaliation. Jacksons Food Stores shall impose discipline, up to and including termination of



1 employment, upon any supervisor, manager, hiring official, or human resources personnel, who  
2 it determines discriminates against any applicant and/or employee on the basis of disability.

3 24. In conducting performance reviews, Defendant shall include EEO enforcement  
4 and compliance as standards for managers, supervisors, store managers, hiring/interviewing  
5 officials, and human resources personnel.

6 25. During the pendency of this Consent Decree, Defendant shall make available a  
7 hiring or human resources official, or other appropriate personnel responsible for hiring in all its  
8 facilities and offices within its Washington Districts within Region 2 for audits made upon  
9 request by EEOC to determine compliance with this Consent Decree. EEOC shall provide notice  
10 of audit subject matter not later than five (5) business days in advance but, at a minimum, the  
11 audit shall include whether Defendant has denied employment to any individual who is deaf or  
12 hard of hearing and whether Defendant has received any complaints about discrimination against  
13 individuals who are deaf or hard of hearing. Any requested audit will be conducted at a mutually  
14 agreeable time and place.

15 F. Reporting

16 26. Jacksons Food Stores shall report to the EEOC for a period of five (5) years. The  
17 reports shall be in writing and submitted on a semi-annual basis during the five-year reporting  
18 period. The reporting period will run from the date of the entry of this Consent Decree.

19 27. These semi-annual reports shall contain the following information and  
20 attachments:

21 a. Certification that Jacksons Food Stores has:

- 22 1. Continued to maintain its written EEO policies and procedures and  
23 distributed copies of its EEO policy as described in Paragraphs 13-17;
- 24 2. Complied with the training provisions enumerated in this Consent Decree,  
25 as provided in Paragraphs 18-21 and provide a list of all attendees, with  
job titles, for each training completed; and

3. Continued to promote accountability by managers, supervisors, store managers, hiring/interviewing officials, and human resources personnel as required by Paragraph 23-24; and

4. Complied with all other provisions of this Consent Decree.

b. Copies of the following documents shall be included with each semi-annual report submitted to the Seattle Field Office of the EEOC as indicated in paragraph 8:

1. A copy of the EEO policy and procedures maintained in accordance with the provisions of this Consent Decree;

2. A copy of its current EEO policy and a list of any changes, modifications or revisions to its EEO policies and procedures, if any, which concern or affect the subject of discrimination or retaliation;

3. A summary of internal formal or informal disability discrimination or disability retaliation complaints, if any, filed by employees or applicants, identified by name, the actions taken by the company and the resolution of each such complaint;

4. A sign-in sheet or list of the names and job titles of the Jacksons Food Stores personnel who completed EEO training and the dates the training was conducted during the reporting period.

28. If applicable, Jacksons Food Stores shall submit a statement with its report to the EEOC specifying the areas of noncompliance, the reason for the noncompliance, and the steps that shall be taken to bring Defendant into compliance.

#### G. Posting

29. Jacksons Food Stores shall post a Notice to All Employees. This Notice is attached as Exhibit 1 to this Consent Decree. The Notice shall be conspicuously posted on bulletin board at all Defendant facilities for the duration of the Consent Decree.

### VI. ENFORCEMENT

30. If the EEOC determines that Jacksons Food Stores has not complied with the terms of this Consent Decree, the EEOC shall provide written notification of the alleged breach to Defendant. The EEOC shall not petition the Court for enforcement of this Consent Decree for

1 at least thirty (30) days after providing written notification of the alleged breach. The 30-day  
2 period following the written notice shall be used by the EEOC and Jacksons Food Stores for  
3 good faith efforts to resolve the dispute.

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5 **VII. RETENTION OF JURISDICTION**

6 31. The United States District Court for the Western District of Washington shall  
7 retain jurisdiction over this matter for the duration of this Consent Decree for enforcement  
8 purposes.

9 **VIII. DURATION AND TERMINATION**

10 32. This Consent Decree shall be in effect for five (5) years from the date of entry of the  
11 Decree. If the EEOC petitions the Court for breach of this Consent Decree, and the Court

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1 finds Jacksons Food Stores to be in violation of the terms of the Consent Decree, the Court may  
2 extend the duration of this Consent Decree.

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4 Dated this 24th day of August 2018.

5 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

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Page 12 of 12

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